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**CORRECTED**  
**NOTICE OF ALLOWANCE AND FEE(S) DUE**

7590 10/15/2003  
E J Brooks & Associates PLLC  
1221 Nicollet Avenue  
Suite 500  
Minneapolis, MN 55403

EXAMINER	
VAN DOREN, BETH	
ART UNIT	PAPER NUMBER

3623

DATE MAILED: 10/15/2003

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/550,574	04/17/2000	Michael F. VonGonten	1262.001US1	1106

TITLE OF INVENTION: SYSTEM AND METHOD FOR PROJECTING MARKET PENETRATION

APPLN. TYPE	SMALL ENTITY	ISSUE FEE	PUBLICATION FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	YES	\$665	\$0	\$665	01/15/2004

**THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. PROSECUTION ON THE MERITS IS CLOSED.** THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

**THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THIS STATUTORY PERIOD CANNOT BE EXTENDED.** SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE REFLECTS A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE APPLIED IN THIS APPLICATION. THE PTOL-85B (OR AN EQUIVALENT) MUST BE RETURNED WITHIN THIS PERIOD EVEN IF NO FEE IS DUE OR THE APPLICATION WILL BE REGARDED AS ABANDONED.

**HOW TO REPLY TO THIS NOTICE:**

I. Review the SMALL ENTITY status shown above.

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

A. If the status is the same, pay the TOTAL FEE(S) DUE shown above.

B. If the status is changed, pay the PUBLICATION FEE (if required) and twice the amount of the ISSUE FEE shown above and notify the United States Patent and Trademark Office of the change in status, or

If the SMALL ENTITY is shown as NO:

A. Pay TOTAL FEE(S) DUE shown above, or

B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check the box below and enclose the PUBLICATION FEE and 1/2 the ISSUE FEE shown above.

☐ Applicant claims SMALL ENTITY status.  
See 37 CFR 1.27.

II. PART B - FEE(S) TRANSMITTAL should be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). Even if the fee(s) have already been paid, Part B - Fee(s) Transmittal should be completed and returned. If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Mail Stop ISSUE FEE unless advised to the contrary.

**IMPORTANT REMINDER:** Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.

# **PART B - FEE(S) TRANSMITTAL**

**Complete and send this form, together with applicable fee(s), to: Mail**

**Mail Stop ISSUE FEE  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
(703) 746-4000**

**or Fax**

**INSTRUCTIONS:** This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 4 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Legibly mark-up with any corrections or use Block 1)

7590 10/15/2003

E J Brooks & Associates PLLC  
1221 Nicollet Avenue  
Suite 500  
Minneapolis, MN 55403

Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

## **Certificate of Mailing or Transmission**

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO, on the date indicated below.

(Depositor's name)
(Signature)
(Date)

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nonprovisional	YES	\$665	\$0	\$665	01/15/2004

EXAMINER	ART UNIT	CLASS-SUBCLASS
VAN DOREN, BETH	3623	705-010000

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

- ☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.
- ☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. Use of a Customer Number is required.

2. For printing on the patent front page, list (1) the names of up to 3 registered patent attorneys or agents OR, alternatively, (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed.

1	_____
2	_____
3	_____

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. Inclusion of assignee data is only appropriate when an assignment has been previously submitted to the USPTO or is being submitted under separate cover. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

(B) RESIDENCE: (CITY and STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent); ☐ individual ☐ corporation or other private group entity ☐ government

4a. The following fee(s) are enclosed:

- ☐ Issue Fee
- ☐ Publication Fee
- ☐ Advance Order - # of Copies \_\_\_\_\_

4b. Payment of Fee(s):

- ☐ A check in the amount of the fee(s) is enclosed.
- ☐ Payment by credit card. Form PTO-2038 is attached.
- ☐ The Director is hereby authorized by charge the required fee(s), or credit any overpayment, to Deposit Account Number \_\_\_\_\_ (enclose an extra copy of this form).

Director for Patents is requested to apply the Issue Fee and Publication Fee (if any) or to re-apply any previously paid issue fee to the application identified above.

(Authorized Signature)

(Date)

NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, Alexandria, Virginia 22313-1450.

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EXAMINER

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DATE MAILED: 10/15/2003

## Determination of Patent Term Extension under 35 U.S.C. 154 (b)

(application filed after June 7, 1995 but prior to May 29, 2000)

The Patent Term Extension is 0 day(s). Any patent to issue from the above-identified application will include an indication of the 0 day extension on the front page.

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Extension is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) system (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (703) 305-1383. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at (703) 305-8283.



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7590	10/15/2003		EXAMINER	
E J Brooks & Associates PLLC 1221 Nicollet Avenue Suite 500 Minneapolis, MN 55403			VAN DOREN, BETH	
			ART UNIT	PAPER NUMBER
			3623	
DATE MAILED: 10/15/2003				

## Notice of Fee Increase on October 1, 2003

If a reply to a "Notice of Allowance and Fee(s) Due" is filed in the Office on or after October 1, 2003, then the amount due will be higher than that set forth in the "Notice of Allowance and Fee(s) Due" since there will be an increase in fees effective on October 1, 2003. See Revision of Patent Fees for Fiscal Year 2004; Final Rule, 68 Fed. Reg. 41532, 41533, 41534 (July 14, 2003).

The current fee schedule is accessible from (<http://www.uspto.gov/main/howtofees.htm>).

If the fee paid is the amount shown on the "Notice of Allowance and Fee(s) Due" but not the correct amount in view of the fee increase, a "Notice of Pay Balance of Issue Fee" will be mailed to applicant. In order to avoid processing delays associated with mailing of a "Notice of Pay Balance of Issue Fee," if the response to the Notice of Allowance is to be filed on or after October 1, 2003 (or mailed with a certificate of mailing on or after October 1, 2003), the issue fee paid should be the fee that is required at the time the fee is paid. If the issue fee was previously paid, and the response to the "Notice of Allowance and Fee(s) Due" includes a request to apply a previously-paid issue fee to the issue fee now due, then the difference between the issue fee amount at the time the response is filed and the previously-paid issue fee should be paid. See Manual of Patent Examining Procedure, Section 1308.01 (Eighth Edition, August 2001).

Effective October 1, 2003, 37 CFR 1.18 is amended by revising paragraphs (a) through (c) to read as set forth below.

Section 1.18 Patent post allowance (including issue) fees.

- (a) Issue fee for issuing each original or reissue patent, except a design or plant patent:
- By a small entity (Sec. 1.27(a))..... \$665.00
  - By other than a small entity..... \$1,330.00
- (b) Issue fee for issuing a design patent:
- By a small entity (Sec. 1.27(a))..... \$240.00
  - By other than a small entity..... \$480.00
- (c) Issue fee for issuing a plant patent:
- By a small entity (Sec. 1.27(a))..... \$320.00
  - By other than a small entity..... \$640.00

Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at (703) 305-8283.

# Notice of Allowability

Application No.

09/550,574

Examiner

Beth Van Doren

Applicant(s)

VONGONTEN, MICHAEL F.

Art Unit

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## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to communications received 12/16/02.
2. ☒ The allowed claim(s) is/are 1-46.
3. ☒ The drawings filed on 04/17/00 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- \* Certified copies not received: \_\_\_\_\_.
5. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - (a) ☐ The translation of the foreign language provisional application has been received.
6. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

7. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8. ☐ CORRECTED DRAWINGS must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No. \_\_\_\_\_.
  - (b) ☐ including changes required by the proposed drawing correction filed \_\_\_\_\_, which has been approved by the Examiner.
  - (c) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the top margin (not the back) of each sheet. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

9. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

- |  |   |
|--|---|
| 1 <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                             | 2 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)          |
| 3 <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                    | 4 <input type="checkbox"/> Interview Summary (PTO-413), Paper No. _____.            |
| 5 <input type="checkbox"/> Information Disclosure Statements (PTO-1449), Paper No. _____.              | 6 <input checked="" type="checkbox"/> Examiner's Amendment/Comment                  |
| 7 <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material | 8 <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
|  | 9 <input type="checkbox"/> Other  |

TARIQ R. HAFIZ  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600

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### **DETAILED ACTION**

1. The following is a response to communications received on 12/16/02. Claims 1, 10, 19, 28, and 36 were amended. Claims 1-46 are now pending in this application.

#### ***Response to Amendment***

2. Applicant's submission of the substitute abstract is sufficient to overcome the specification objections set forth in the previous office action.
3. Examiner withdraws the 35 USC § 112, first paragraph, rejections of claims 1, 10, 19, 28, and 36.
4. Applicant's amendment of claims 1, 10, 19, 28, and 36 are sufficient to overcome the 35 USC § 112, second paragraph, rejections set forth in the previous office action.
5. Examiner acknowledges the clarification of inventorship in the communications of 12/16/02.
6. Examiner acknowledges the applicant's response to the Requirement for Information under 37 CFR §1.105 in the communications of 12/16/02.

#### ***Examiner's Amendment***

7. An examiner's amendment to the record appears below. Should the changes be unacceptable to the applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Edward J. Brooks on January 30, 2003. The application has been amended as follows:

b

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**In the claims:**

36. A computer method for projecting market penetration of merchandise at a predetermined number of weeks, W, since a launch of a product, based on a set of weekly sales data from the product launch, the method comprising:

using a set of computer executable instructions to generate [generating] a curve from weekly sales data wherein the curve plots a set of weekly sales data versus number of weeks from the launch of a product;

using a set of computer executable instructions to retrieve [retrieving] a component of the curve (B) representing a degree of belly of the curve;

using a set of computer executable instructions to retrieve [retrieving] a component from the curve representing a slope (S); and

using a set of computer executable instructions to perform [performing] a calculation to produce a predicted or continued market sales volume component using the B component and the slope component in a formula, wherein the formula is:

$$\text{Predicted} = \text{Exp}(s) \times W^B.$$

***Reasons for Allowance***

8. Claims 1-46 are allowed.

9. The following is an examiner's statement of reasons for allowance: None of the prior art of record, taken individually or in any combination, teach, inter alia, the use of the defined relationship  $\text{Predicted} = \text{Exp}(s) \times W^B$  to project market penetration.

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The prior art references most closely resembling the Applicant's claimed invention are von Gonten et al. ("Advertising Exposure and Advertising Effects: New Panel Based Findings"), Eder (U.S. 6,321,205), Ando (U.S. 6,032,125), Fields et al. (U.S. 5,459,656), Morrison ("Life-cycle approach to new product forecasting"), and Forst ("Forecasting Restaurant Sales Using Multiple Regression and Box-Jenkins Analysis").

First, von Gonten et al. discloses projecting market penetration by modeling week to week data to analyze the depth of penetration and the repeat patterns of a pool of buyers. The modeled data is searched for points of inflection to determine the rate of change in the purchasing volume over time. However, von Gonten et al. does not teach or suggest using the defined relationship  $\text{Predicted} = \text{Exp}(s) \times W^B$  to project this market penetration.

Second, Eder discusses forecasting future sales/the value of a business using input datasets about the company and algorithms that account for changes in the datasets over time and the long-term effects of present events. Eder further discusses an internet-based remote user interfaces linked to servers that contain the application software. However, Eder does not teach or suggest using the defined relationship  $\text{Predicted} = \text{Exp}(s) \times W^B$  to make the forecasts or implementing the defined relationship  $\text{Predicted} = \text{Exp}(s) \times W^B$  in the application software.

Third, Fields et al. discusses using past business demand data to project business demand data for future time intervals. Demand curves are generated using the historical demand data from past time intervals. However, Fields et al. does not teach or suggest using the defined relationship  $\text{Predicted} = \text{Exp}(s) \times W^B$  to project this demand based on the past market penetration.

b



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Fourth, Morrison discusses a new product's life cycle and modeling this life cycle and the demand for the new product when no historical data exists about its market penetration. Morrison further discusses how the inflection point of the model represents the time of the fastest selling rate for the product. However, Morrison does not teach or suggest using the defined relationship  $\text{Predicted} = \text{Exp}(s) \times W^B$  when generating this model of potential market penetration.

Fifth, Forst discusses the use of forecasting models and previous weeks' sales data to analyze the market penetration and predict the future demand of the product. A curve is generated on a graph to perform the analysis. However, Morrison does not teach or suggest using the defined relationship  $\text{Predicted} = \text{Exp}(s) \times W^B$  to project market penetration.

Any comments considered necessary by the Applicant must be submitted by no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statements for Reasons for Allowance".

The Application having been allowed, formal drawings are required in response to this Office Action.

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### *Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Fields et al. (U.S. 5,299,115) discusses using past business demand data to project business demand data for future time intervals by generating demand curves.

Usrey (U.S. 6,366,890) teaches determining the market demand for products by importing files about past market demand and analyzing this data.

Arbabi et al. (U.S. 5,461,699) discusses the use of a predictive neural network by applying it to historical data.

McManus et al. (U.S. 6,401,070) discloses sales forecasts using historical data and a sales model that includes a generated curve.

Eder (U.S. 5,615,109) teaches forecasting future sales/the value of a business using input datasets about the company, algorithms that account for changes in the datasets over time and the long-term effects of present events, and an internet-based system.

Lee et al. (U.S. 5,712,985) discusses a demand forecasting system.

Davoust (U.S. 5,375,201) teaches generating curves to analyze historical data.

Walker et al. ("Why Liking Matters") teaches the market penetration of advertising.

"Marketplace Worldwide" ([www.moonhoney.com](http://www.moonhoney.com)) teaches the work of Applicant.

b

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Ephron et al. ("Media Scheduling and carry-over effects") teaches the market penetration of advertising and its predictive effect on the market. Modeling the data associated with the market penetration is also disclosed.

Mahajan et al. ("When is it worthwhile targeting the majority instead of the innovators in a new product launch") discusses an analytical model used to evaluate market conditions.

Ando (JP 410143490 A) teaches a system with a prediction engine that is used with a plurality of prediction models and sales data to predict market demand.

Nomura (JP 10307808 A) discusses an apparatus that logs purchase data and uses it to forecast future sales.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beth Van Doren whose telephone number is (703) 305-3882. The examiner can normally be reached on M-F, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (703) 305-9643. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-

1113.

*bvd*

bvd

February 2, 2003

*[Signature]*  
**TARIQ R. HAFIZ  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3800**

*b*